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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KAREN SUE HALE,

Defendant and Appellant.

B218050

(Los Angeles County  
Super. Ct. No. YA071199)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Brandlin, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Chung L. Mar and Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Defendant Karen Sue Hale appeals from the judgment entered following her conviction by a jury on one count of grand theft and four counts of forgery. Her sole contention on appeal is the trial court erred in failing to stay her sentence on the forgery convictions under Penal Code<sup>1</sup> section 654. We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### ***A. The Information***

Defendant was charged by information with grand theft (§ 487, subd. (a)) in that on or between February 21, 2005 and November 30, 2007, she unlawfully took \$39,959.30 from the Gardena Valley Chamber of Commerce (count 2)<sup>2</sup>; and forgery (§ 476), in that on or about October 6, 2006 (count 3), February 6, 2007 (count 4), March 1, 2007 (count 5) and September 5, 2007 (count 6), she unlawfully made or passed a forged check with the intent to defraud.

### ***B. Summary of Trial Evidence***

Because defendant does not challenge the sufficiency of the evidence to support her convictions, we merely give a summary of the evidence that is pertinent to the issue on appeal.

In 2005, defendant was employed by the Gardena Valley Chamber of Commerce (the Chamber). Her duties included managing the office, opening the mail, and soliciting membership. Defendant also handled the Chamber's finances, which involved depositing checks received from various local businesses into the Chamber's bank accounts, one

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> Prior to trial, the trial court dismissed count 1, an additional charge of grand theft, on the People's motion.

with First Bank of Gardena (First Bank) and another with the U.S. Bank of Gardena (U.S. Bank). Defendant was not authorized to withdraw cash or to sign checks on either account. At the monthly Chamber board meetings, defendant took minutes and reported on the Chamber's finances and the accounts' activity.

During a June 2005 board meeting, defendant was directed to close the U.S. Bank account. She was expressly told to write a check for the approximately \$1,000 balance and to deposit it into the First Bank account. At the next board meeting, defendant provided a computer printout she had prepared, showing the U.S. Bank account had been closed, and the balance had been transferred to the First Bank account.

Defendant transferred the U.S. Bank account balance as instructed; however, she did not close the account, but instead maintained it for her own financial gain by embezzling Chamber money. From July 2005 through May 2006, defendant regularly visited U.S. Bank to deposit into the account checks the Chamber had received from local businesses. During the same visit, defendant then retrieved money from the account in one of two ways: she either requested a sum of "cash back" on the deposit slip, or presented a withdrawal slip for a sum of cash, immediately following the deposit. Although defendant was not listed with U.S. Bank as being authorized to withdraw money from the Chamber's account, she had no difficulty obtaining the cash.<sup>3</sup> The bank manager's approval, which was initially sought for these transactions, was apparently dispensed with once defendant became a weekly customer at the bank, where she also had her personal account.

Defendant turned to another means of taking the Chamber's money from the U.S. Bank account. Defendant had access to the remaining checks on that account. In 2006 and 2007, Defendant wrote and cashed at least four of those checks, forging the name of

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<sup>3</sup> The parties stipulated that between July 1, 2005 and November 30, 2007, defendant deposited checks made out to the Gardena Valley Chamber of Commerce to its U.S. Bank checking account. The parties further stipulated defendant made cash withdrawals and cash backs and the records from the U.S. Bank and First Bank were true and accurate.

a former board member.<sup>4</sup> One of those checks, dated October 6, 2006, was for \$500 and made payable to defendant's husband, Ronald Hale. The other three checks, which were dated February 6, 2007 for \$1,375, March 1, 2007 for \$2,213.85, and September 5, 2007 for \$675, were made payable to defendant and she cashed them at a liquor store.

### ***C. Verdict and Sentencing Hearing***

The jury convicted defendant as charged.

Prior to sentencing, defense counsel argued section 654 applied to stay sentence on the forgery convictions, as the offenses were committed to facilitate the grand theft. However, the trial court disagreed, finding each forgery was a separate and distinct offense from the other forgeries and from the grand theft. The court sentenced defendant to an aggregate state prison term of five years eight months, consisting of the upper term of three years for grand theft (count 2) and consecutive terms of eight months (one-third the middle term) for each of the forgeries. She was ordered to pay \$22,611.01 in restitution to the Chamber. The court awarded her 132 days of presentence custody credits.<sup>5</sup>

## **DISCUSSION**

Defendant contends the trial court violated section 654,<sup>6</sup> which prohibits punishment for multiple offenses arising from the same act or from a series of acts

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<sup>4</sup> On each check, defendant had forged the signature of Fern Haning, who, until she left in 2005, was a board member authorized to sign checks on the U.S. Bank account for the Chamber.

<sup>5</sup> The award of 132 days of presentence custody credits is a result of the trial court's modification on February 10, 2010, of its original award pursuant to newly revised section 4019.

<sup>6</sup> Section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that

constituting an indivisible course of conduct (*People v. Latimer* (1993) 5 Cal.4th 1203, 1216; *People v. Harrison* (1989) 48 Cal.3d 321, 335), by imposing separate sentences for the grand theft (count 2) and forgery (counts 3, 4, 5 and 6) convictions. According to defendant, the offenses were committed to achieve a single criminal objective—to take the Chamber’s money—whether by embezzling from the U.S. Bank account through “cash backs” or withdrawals or by negotiating forged checks on the account.

“The test for determining whether section 654 prohibits multiple punishment has long been established: ‘Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’” (*People v. Britt* (2004) 32 Cal.4th 944, 951-952.) “If, on the other hand, defendant harbored ‘multiple criminal objectives,’ which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, ‘even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.’” (*People v. Harrison, supra*, 48 Cal.3d at p. 335.) “‘The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple.’ [Citation.] ‘A defendant’s criminal objective is “determined from all the circumstances . . . .”’” (*In re Jose P.* (2003) 106 Cal.App.4th 458, 469; accord, *People v. Vu* (2006) 143 Cal.App.4th 1009, 1033.)

Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466.) Its findings will not be reversed on appeal if there is any substantial evidence to support them. (*Hutchins*, at p. 1312; *Herrera*, at p. 1466; *People v. Nichols* (1994) 29 Cal.App.4th 1651, 1657.) “We review the trial court’s determination in the light most

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provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.”

favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143; see *People v. Cleveland* (2001) 87 Cal.App.4th 263, 271 [trial court’s finding of “separate intents” reviewed for sufficient evidence in light most favorable to the judgment].)

While it is true defendant’s purpose was to take the Chamber’s money from 2005 through 2007, this intent “constitutes too general an objective to constitute one transaction and preclude punishment for divisible separate offenses.” (*People v. Williams* (1980) 106 Cal.App.3d 15, 20, superseded by statute on other grounds as stated in *People v. Preston* (1996) 43 Cal.App.4th 450, 455-456.) In other words, the argument defendant’s overarching goal was to steal from her employer proves too much. Indeed, every illegal step a perpetrator takes toward succeeding in a fraudulent scheme is designed for personal enrichment at the victim’s expense, but that does not automatically trigger the application of section 654. “[A]n assertion of a desire for wealth as the sole intent and objective in committing a series of separate thefts . . . to preclude punishment for otherwise clearly separate offenses would violate the statute’s purpose to insure that a defendant’s punishment will be commensurate with his [or her] culpability. [Citation.]” (*People v. Perez* (1979) 23 Cal.3d 545, 552.)

Substantial evidence supports the trial court’s conclusion that defendant’s grand theft by embezzlement and forgeries were separate and distinct offenses. The record shows the embezzlement and forgeries involved entirely distinct different methods, which were undertaken at primarily separate periods of time, and at different locations. Defendant’s theft by embezzlement occurred mainly in 2005 and 2006, during which time defendant obtained cash at the bank from deposits she was making into her employer’s account, which she had been told to close. Defendant’s objective in committing this offense was to convert, for her own benefit, the money intended for her employer. (See CALCRIM No. 1806, § 503.) Defendant’s forgery offenses occurred later, during 2006 and 2007, when she negotiated a series of forged checks on her employer’s account at a liquor store. Defendant’s objective in committing these offenses

was to deceive a liquor store employee into cashing them. (See CALCRIM No. 1935, § 476.)

Even if the embezzlement and forgeries were part of a single purpose—to take the Chamber’s money—that does not mean section 654 bars punishment for each of the crimes. ““Under section 654, “a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]” [Citations.] This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken.”” (*People v. Andra* (2007) 156 Cal.App.4th 638, 640; accord, *People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11; *People v. Gaio* (2000) 81 Cal.App.4th 919, 935; *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253-1254.) The trial court was entitled to conclude the separation in time between the embezzlement and forgeries afforded defendant sufficient opportunity to reflect upon her initial crime and reconsider her course of conduct.<sup>7</sup>

As for the individual forgery offenses, section 654 does not preclude them from being sentenced individually. In *People v. Neder* (1971) 16 Cal.App.3d 846, 850, the

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<sup>7</sup> From the stipulations and the documentary evidence, the record is not entirely clear as to whether defendant continued to make deposits, cash backs and withdrawals at the U.S. Bank, while she was also negotiating the forged checks in 2006 and 2007. To the extent the embezzlement and forgery offenses overlapped in 2006 and 2007, the forgeries assisted in defendant’s overarching goal of stealing from the Chamber, but were not essential to or indivisible from the embezzlement. Unlike cases upon which defendant relies in contending she harbored a single objective and intent in committing the offenses, the embezzlement was not predicated on the same facts supporting the forgeries. For example, to support her argument, defendant cites *People v. Curtin* (1994) 22 Cal.App.4th 528 [sentence on the forgery conviction should have stayed under section 654, because the defendant committed burglary by entering a bank and cashing a forged check]; and *People v. Caruth* (1965) 237 Cal.App.2d 401 [sentence on grand theft of automobile offense should have stayed because defendant committed offense of issuing worthless check to obtain automobile he was convicted of stealing]. Accordingly, we are not persuaded by such authorities.

defendant was convicted on three counts of forgery for using a stolen Sears credit card to charge purchases in three different departments in the same store and on the same day. The defendant argued, under section 654, he could only be punished for one of the offenses because they formed part of a single plan to take merchandise from Sears by forging the credit card slips. (*Id.* at pp. 854-855.) The *Neder* court rejected this “criminal objective” as being “too broad to tie the separate acts into one transaction.” (*Id.* at pp. 853-854.) The court reasoned each forgery was not a means to accomplish any other; it was not a means to the immediate end of any of the others; and each forgery was committed for the taking of merchandise, separate and unrelated to the merchandise taken by the other forgeries. (*Id.* at pp. 854-855.) Similarly, here too, each act by defendant of negotiating a forged check to deceive the liquor store employee into giving her a sum of cash on a certain date was separate and unrelated to defendant’s acts of negotiating other forged checks for various sums of cash on different dates.

Thus, section 654 does not bar separate punishments for counts 2, 3, 4, 5 and 6.

### **DISPOSITION**

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.